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EXAMINER

LEVINE, ADAM L

ART UNIT

PAPER NUMBER

3625

DATE MAILED: 01/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/804,586

Applicant(s)

HASELTINE, ARTHUR S.

Examiner

Adam L. Levine

Art Unit

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21 through 40 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 21 through 40 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Priority

1. An application in which the benefits of an earlier application are desired must contain a specific reference to the prior application(s) in the first sentence of the specification or in an application data sheet (37 CFR 1.78(a)(2) and (a)(5)). The specific reference to any prior nonprovisional application must include the relationship (i.e., continuation, divisional, or continuation-in-part) between the applications except when the reference is to a prior application of a CPA assigned the same application number. Please state the relationship between the present application and application 09/731,680, filed on December 6, 2000.

Specification

2. Applicant is reminded of the proper content of an abstract of the disclosure.

A patent abstract is a concise statement of the technical disclosure of the patent and should include that which is new in the art to which the invention pertains. If the patent is of a basic nature, the entire technical disclosure may be new in the art, and the abstract should be directed to the entire disclosure. If the patent is in the nature of an improvement in an old apparatus, process, product, or composition, the abstract should include the technical disclosure of the improvement. In certain patents, particularly those for compounds and compositions, wherein the process for making and/or the use thereof are not obvious, the abstract should set forth a process for making and/or use thereof. If the new technical disclosure involves modifications or alternatives, the abstract should mention by way of example the preferred modification or alternative.

The abstract should not refer to purported merits or speculative applications of the invention and should not compare the invention with the prior art.

Where applicable, the abstract should include the following:

- (1) if a machine or apparatus, its organization and operation;
- (2) if an article, its method of making;
- (3) if a chemical compound, its identity and use;
- (4) if a mixture, its ingredients;
- (5) if a process, the steps.

Extensive mechanical and design details of apparatus should not be given.

The abstract of the disclosure is objected to because in lines 5-6 and in line 10 it characterizes the invention as including a “managing inspection-transaction information service.” This element is not mentioned, described, or claimed anywhere else in the application. It is believed that these references to a “managing inspection-transaction information service” therefore do not accurately characterize the invention. Correction is required. See MPEP § 608.01(b). Examiner suggests removing “as well as by a managing inspection-transaction information service” from lines 5-6 and “and, upon buyer's application to accept, that particular point-of-access associate accesses the pertinent terms of acceptance from the managing inspection-transaction information service,” from lines 8-10 of page 28.

3. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following title is suggested: METHOD AND SYSTEM PROVIDING OUT-SOURCED MERCHANDISE EXCHANGE AND ESCROW SERVICES.

4. The disclosure is objected to because of the following informalities: The multiple and interchangeable uses of the words “Service Bureau,” and “Association Service,” in both lower case and title case, including using one term to describe the other, renders their precise definitions and relationship difficult to understand. For example, they appear on page 1, lines 13-15,

“For convenience of terminology in this description, the party or business concern or receiving the out-sourcing business is termed the Service Bureau or at alternative other times, the Association Service.”

They also appear on page 12, lines 25-28,

“the service bureau 44 best services its populous community of e-tailers (eg., 14) and brick-of-mortar point-of-return associates 42 with a variety of association services.”

At the same time, according to the drawing figures it appears that the “Service Bureau” is actually a sub-element of the “Association Service.” The Examiner has proceeded with the examination of this application under the following assumptions. When “Association Service” appears in capital case, it refers to the specific element indicated in the drawing figures. When “association service(s)” appears in lower case, it refers to one or more of a group of services that might be provided by the “Service Bureau” or “Association Service.” However, when “Service Bureau” appears in capital case it refers to the same element as when “service bureau” appears in lower case.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 21 through 40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 21 recites the steps of “providing”:

“a distributed user public that would order... if given a chance...,”

“a ... seller who would utilize if provided...” and “a relatively proximate opportunity...”. The terms and phrases “would,” “if given a chance,” and “if provided,” and “relatively proximate” are indefinite, rendering the claim indefinite. It appears that applicant may be trying to claim either the public, its state of mind, or both.

Claim 21 also recites the step of “providing an association resource...”. It is unclear what is intended by the reference to an “association resource.” The term “association resource” is not clearly defined in the specification. The “association resource” could be the “Service Bureau” or the “Association Service” or it could refer to or serve the network of distributed point-of-access associates, or it could be all of those things, or it could be something completely different. This makes the claim indefinite.

If the phrase, “as by providing security,” in Claim 21 means the party conforming to the program “as by providing security” is conforming by providing security, please clarify that meaning. In the case of the seller, this would mean the seller is both causing delivery of the merchandise and providing another form of security and that these are two separate actions. Examiner understands that the phrase “as by providing security,” could also be an attempt to describe a prior stated action by comparing it with the act of providing security. This lack of clarity renders the claim indefinite.

Claims 22 through 26 are rejected as depending on rejected Claim 21 and therefore incorporating the indefiniteness in the limitations of Claim 21. **Claims 22 and 25** are further rejected because they each include an additional reference to the element “association

resource.” It is unclear what is intended by the reference to the “association resource.” The term “association resource” is not clearly defined in the specification. The “association resource” could be the “Service Bureau” or the “Association Service” or it could refer to or serve the network of distributed point-of-access associates, or it could be all of those things, or it could be something completely different. Claims 22 and 25 are therefore indefinite. Claim 26 is rejected as depending on rejected Claim 25 that itself depends from rejected Claim 21.

Claim 27 recites the steps of “providing”:

“a distributed user public that would like a chance...,”

“a ... seller who would agree to such if provided...”. The terms and phrases “would like a chance,” “would agree,” and “if provided,” are indefinite, rendering the claim indefinite. It appears that applicant may be trying to claim either the public, the seller, their states of mind, or all of those things.

Claim 27 recites the step of “providing an association resource...,” and in another step, “providing security against the transaction with the association resource”. It is unclear what is intended by “association resource.” The term “association resource” is not clearly defined in the specification. The “association resource” could be the “Service Bureau” or the “Association Service” or it could refer to or serve the network of distributed point-of-access associates, or it could be all of those things, or it could be something completely different. This makes the claim indefinite.

If the phrase, “as by providing security,” in Claim 27 means the party conforming to the program “as by providing security” is conforming by providing security, please clarify that meaning.

Claims 28 through 32 are rejected as depending on rejected Claim 27 and therefore incorporating the indefiniteness in the limitations of Claim 27. **Claims 28, 29, and 31** are further rejected because they each include an additional reference to the “association resource.” It is unclear what is intended by the reference to the “association resource.” The term “association resource” is not clearly defined in the specification. The “association resource” could be the “Service Bureau” or the “Association Service” or it could refer to or serve the network of distributed point-of-access associates, or it could be all of those things, or it could be something completely different.

Claim 33 recites the step of “providing an association resource...,” that step comprising other steps also using the term “association resource.” It is unclear what is intended by “association resource.” The term “association resource” is not clearly defined in the specification. The “association resource” could be the “Service Bureau” or the “Association Service” or it could refer to or serve the network of distributed point-of-access associates, or it could be all of those things, or it could be something completely different. This makes the claim indefinite.

If the phrase, “as by providing security,” in Claim 33 means the party conforming to the program “as by providing security” is conforming by providing security, please clarify that meaning. This would mean each party is both causing delivery of the goods and

providing another form of security and that these are two separate actions. Examiner believes that the phrase “as by providing security,” could also be an attempt to further describe a prior stated action by comparing it with the act of providing security. Thus the claim could be read with the step of the party conforming by “causing delivery” of the goods as security in themselves, or it could be read with the step of the party “causing delivery” of the goods in addition to another form of security. This lack of clarity renders the claim indefinite.

Claims 34 through 40 are rejected as depending from rejected Claim 33 and therefore incorporating the indefiniteness in the limitations in Claim 33. **Claims 36 through 40** are further rejected because they each include additional reference to the “association resource.” It is unclear what is intended by the reference to the “association resource.” The term “association resource” is not clearly defined in the specification. The “association resource” could be the “Service Bureau” or the “Association Service” or it could refer to or serve the network of distributed point-of-access associates, or it could be all of those things, or it could be something completely different.

Claims 35 and 36 include the phrase, “either the association resource or any of the point-of-access associates....” In describing an action to be undertaken by the entity described. In addition to the use of the term “association resource,” previously addressed, these claims appear to be indefinite in describing the range of specific entities capable of acting in the capacities described. Does “any of the point-of-access associates” refer to

those point-of-access associates directly involved in the transaction, or does it refer to any point-of-access associate in the entire network of distributed point-of-access associates?

The Examiner has endeavored to continue the examination of this application by determining the meaning of the various claims as best understood.

Claim Rejections - 35 USC § 101

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 21 through 40 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The claims are directed to a process that does nothing more than manipulate an abstract idea. Mere recitation in the preamble (i.e., intended use) or mere implication of employing a machine or article of manufacture to perform some or all of the recited steps does not confer statutory subject matter to an otherwise abstract idea. There is no practical application in the technological arts. For subject matter to be statutory, the claimed process must be limited to a practical application of the abstract idea or mathematical algorithm in the technological arts. See *In re Alappat* 33 F.3d at 1543, 31 USPQ2d at 1556-57 (quoting *Diamond V. Diehr*, 450 U.S. at 192, 209 USPQ at 10). A claim is limited to a practical application when the method, as claimed, produces a concrete, tangible and useful result: i.e. the method recites a step or act of producing something that is concrete, tangible and useful. See *AT&T v. Excel Communications Inc.*, 172 F.3d at 1358, 50 USPQ2d at 1452.

Claim 21 describes a method directed to the intended use of affording “a distributed user public a relatively proximate opportunity for a walk-in inspection of ordered merchandise before accepting or refusing delivery.” It claims a sequence of abstract ideas, business terms and conditions with no practical application in the technological arts, whose end result is the offering of intangible opportunities to inspect merchandise, and “increase public traffic.” The suggestion that the method is intended to serve “generally online sellers” does not confer statutory subject matter to an otherwise abstract idea. Mere recitation in the preamble (i.e., intended use) or mere implication of employing a machine or article of manufacture to perform some or all of the recited steps does not confer statutory subject matter to an otherwise abstract idea.

Claims 22 through 26 each depend on Claim 21 and add additional abstractions, abstract business terms and conditions, to wit:

22. “...security against the order can take the form of a direct payment to account, an advance authorization to a credit card charge or by otherwise securing payment in some chargeable fashion under the control of the association resource.”

23. “...user providing security against the order can be transacted as late as concurrent with the walk-in inspection.”

24. “...seller providing security against the order can be transacted as late as concurrent with the given point-of-access associate taking delivery of the merchandise.”

25. "...the association resource supplies program information to the point-of-access associates including information for the given point-of-access associate on particular conditions of release the inspected merchandise to the inspecting user."

26. "...the particular conditions of release include verification that the inspecting user sufficiently fulfills or secures payment or barter for the inspected merchandise."

These are abstract terms and conditions that may or may not be met and that each in turn, and altogether, fail to provide practical application in the technological arts.

Claim 27 describes a method directed to the intended use of "facilitating transactions between a distributed user public and remote, generally online sellers; comprising the steps of: ... providing an association resource that supplies a secured-exchange program comprising the steps of: ...". It claims a sequence of abstract ideas, business terms and conditions with no practical application in the technological arts, whose end result is the offering of intangible opportunities to inspect merchandise, and "increase public traffic." The suggestion that the method is intended to serve "generally online sellers" does not confer statutory subject matter to an otherwise abstract idea. Mere recitation in the preamble (i.e., intended use) or mere implication of employing a machine or article of manufacture to perform some or all of the recited steps does not confer statutory subject matter to an otherwise abstract idea.

Claims 28 through 32 each depend on Claim 27 and add additional abstractions, abstract business terms and conditions, to wit:

28. "...security against the transaction can take the form of ... securing payment in some chargeable fashion under the control of the association resource."

29. "...security against the transaction includes cover for fees of the association resource and point-of-access associate for providing the program including fees in cases of transactions gone awry."

30. "...given user's security against the transaction is a condition precedent before the given seller moves to cause delivery."

31. "... the association resource supplies program information to the point-of-access associates including information for the given point-of-access associate on particular conditions of release of the inspected merchandise to the inspecting user."

32. "...the particular conditions of release include verification that the inspecting user sufficiently fulfills or secures payment or barter for the inspected merchandise."

These are abstract terms and conditions that may or may not be met and that each in turn, and altogether, fail to provide practical application in the technological arts.

Claim 33 describes a method directed to the intended use of providing "generally remote parties" the opportunity to "inspect each other's goods" by providing "point-of-access associates that supply a network of distributed, physical stores" and "an association resource that supplies a secured-exchange program comprising the steps of: ...". It continues to claim a sequence of abstract ideas, business terms and conditions with no practical application in the technological arts, whose end result is the offering of intangible opportunities to inspect each other's merchandise before agreeing to accept, and "increase

public traffic” for the point-of-access associates. There is no suggestion that a machine or article of manufacture will perform some or all of the recited steps, nor would the recitation or implication of such a thing confer statutory subject matter on an otherwise abstract idea, if such implication or recitation were offered by the “association resource.”

Claims 34 through 40 each depend on Claim 33 and merely add additional abstractions, abstract business terms and conditions, to wit:

34 . “...failure to act timely and inspect is construed as constructive refusal.”

35. “...either the association resource or any of the point-of-access associates originating contact with the respective parties upon the readiness of the corresponding goods for inspection.”

36. “...the association resource, any of the point-of-access associates, or an opposite party monitors the lapse of time and follow-up contacts since the original contact with a tardy party in order to decide whether such a tardy party constructively refuses by reason of failure to act timely to inspect.”

37. “...security against the transaction can take the form of ...securing payment in some chargeable fashion under the control of the association resource.”

38. “...security against the transaction be inputted with either of the given or the counter point-of-access associates, any different others of the point-of-access associates, or the association resource.”

39. "...security against the transaction includes cover for fees of the association resource and point-of-access associates for providing the program including fees in cases of transactions gone awry."

40. "...association resource supplies various other matters of information to the point-of-access associate: including information in cases of any refusal."

These are abstract terms and conditions that may or may not be met and that each in turn, and altogether, fail to provide practical application in the technological arts.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 21 through 25 and 27 through 32 are rejected under 35 U.S.C. 102(e) as being anticipated by Walker (US Patent No. 6,108,639).

Referring to Claim 21, Walker discloses a method of secured exchanges of merchandise serving both a distributed user public as well as remote and generally online sellers; comprising the steps of:

providing a distributed user public that would order merchandise from remote sellers if given a chance to inspect first before accepting or refusing delivery;

providing a given remote seller who would utilize if provided some measure of security an out-sourced network of distributed brick-and-mortar sites to afford a distributed public a relatively proximate opportunity for a walk-in inspection of ordered merchandise before accepting or refusing delivery;

providing an out-sourced network of distributed point-of-access associates that supply a network of distributed, physical stores in which to offer walk-in merchandise inspections of remote sellers' merchandise;

providing an association resource that supplies a secured-exchange program comprising the steps of:

a given user ordering merchandise from the given seller in conformance with the program as by providing security against the order with the association resource;

the given user and seller agreeing to a given point-of-access associate's store for a walk-in inspection; and,

the seller causing delivery of the merchandise to the given point-of-access associate's store in conformance with the program as by providing security against the order with the association resource;

whereby the given user can utilize the given point-of-access associate's store for a walk-in inspection of the merchandise before opting to accept or refuse delivery and, also,

said secured exchange program affords the given point-of-access associate with opportunities to increase public traffic by offering the inspections.

The present application's claimed point-of-access associates supply physical stores for inspections of sellers' merchandise. A physical store is a distribution point. This is met by Walker's dealer/authenticators, who serve as distribution and inspection points for the subject goods. (See Walker page 3, lines 40 through 48).

The "secured exchange program" supplied by the "association resource" described in the present application is the same as the "conditional purchase offer management system" described in Walker. In Walker, page 5, lines 6 through 10, the user ("buyer") orders merchandise by placing a conditional purchase offer with the CPO management system. In lines 62 through 65, and on page 10, lines 10 through 15, Walker shows that the CPO may be guaranteed (security provided against the order) by the buyer.

In any transaction the buyer and seller must ultimately agree upon each and every one of the final terms and conditions that will bind them. This is an abstract business condition that does not lend distinguishable patentability to the present application over Walker or any other method of doing business. It is inherent that the user and seller in Walker would necessarily agree to use a given dealer/authenticator in order for the transaction to take place, as it is inherent that the buyer and seller in the present application must agree upon a point-of-access associate. Walker at page 11, lines 35 through 38, and page 12, lines 28 to 32, discloses the criteria for determining an appropriate dealer/authenticator (point-of-access associate). These criteria having been agreed upon by the buyer (user) and seller, a person of

ordinary skill would necessarily conclude that the consummation of the transaction using said dealer/authenticator means that the parties have agreed to the choice.

Walker provides for the seller to deliver the merchandise to the given dealer / authenticator on page 11, lines 38 to 40, and page 12, lines 32 to 34.

Walker provides further refinement beyond the present application in suggesting that the dealer/authenticator itself serves as a third-party inspector, however, on page 6, lines 36-38, Walker discloses an embodiment allowing the buyer to evaluate the inventory, which is the same as inspecting the goods. Increased public traffic would also result from the method of Walker, as buyers present themselves to the location of the dealer/authenticator to take delivery or inspect the inventory.

Claims 22 through 25 are dependent upon and incorporate all of the elements of Claim 21. **Referring to Claim 22**, Walker, on page 5, lines 62 through 65, page 8, lines 39 to 42, and on page 10, lines 10 through 15, also discloses the secured exchange method of claim 21 wherein security against the order can inherently take the various noted forms.

Referring to Claim 23, Walker discloses the given user providing security against the order can be transacted as late as concurrent with the walk-in inspection. The Examiner interprets providing security against the order in this context to mean the placement of value by the potential purchaser in exchange for allowing the potential purchaser temporary possession of the item for purposes of inspection. This is done as a show of good faith, to cover administrative costs and/or to protect the seller against damage to the item during

inspection. When the placement of value occurs concurrent with walk-in inspection, it resembles any ordinary retail business transaction, where the customer (user) comes to the store, picks up an item, inspects it, brings it to the counter, pays for it, and leaves with the item. It can be argued that providing security is not the same as paying for the item, however, if security is provided concurrent with inspection, and the item is accepted, there is no difference. If the item is rejected, this is comparable with the situation when the purchaser takes possession of the item concurrent with payment, but later determines the item to be defective or otherwise unacceptable, returning it for a refund of the amount paid possibly minus handling costs, or costs of the transaction, thereby effectively rendering the amount paid security concurrent with inspection. Payment upon delivery and inspection is disclosed by Walker on page 2, lines 54-55, page 3, lines 53-55, page 5 lines 36-39, and various other places throughout.

Referring to Claim 24, Walker discloses the secured exchange method of claim 21 the given seller providing security against the order can be transacted as late as concurrent with the given point-of-access associate taking delivery of the merchandise. This is obvious on its face if the security takes the form of the merchandise. The concept of the seller providing a form of security in addition to its merchandise is provided by Walker on page 8, lines 39 through 42.

Referring to Claim 25, Walker, page 6, lines 41 through 46, discloses the secured exchange method of claim 21 wherein the association resource (CPO management system) supplies program information to the point-of-access associates including information for the

given point-of-access associate on particular conditions of release the inspected merchandise to the inspecting user.

Referring to Claim 26, Walker discloses the secured exchange method of claim 25 wherein the particular conditions of release include verification that the inspecting user sufficiently fulfills or secures payment or barter for the inspected merchandise at page 10, lines 5 through 10, 13 through 15, and 30 to 40, and page 12, lines 16 through 28.

Referring to Claim 27, Walker discloses a method of secured exchanges of merchandise facilitating transactions between a distributed user public and remote, generally online sellers; comprising the steps of:

- providing a distributed user public that would like a chance to inspect merchandise from remote sellers before having to accept or refuse delivery;

- providing a given remote seller who would agree to such if provided some measure of security;

- providing an out-sourced network of distributed point-of-access associates that supply a network of distributed, physical stores in which to offer walk-in merchandise inspections of remote sellers' merchandise;

- providing an association resource that supplies a secured-exchange program comprising the steps of:

- a given user contacting the given seller to cause delivery for inspection of merchandise on a specified point-of-access associate's store in conformance with the program as by providing security against the transaction with the association resource; and,

the seller causing delivery of the merchandise to the specified point-of-access associate's store whereby the given user can utilize the opportunity for a walk-in inspection of the merchandise before opting to accept or refuse delivery;

said secured-exchange program thereby affording the point-of-access associates with opportunities to increase public traffic by offering the inspections.

The present application's claimed point-of-access associates supply physical stores for inspections of sellers' merchandise. A physical store is a distribution point. This is met by Walker's dealer/authenticators, who serve as distribution and inspection points for the subject goods. (See Walker page 3, lines 40 through 48).

The "secured exchange program" supplied by the "association resource" described in the present application is the same as the "conditional purchase offer management system," including a "central controller" described in Walker. In Walker, page 5, lines 6 through 10, the user ("buyer") orders merchandise by placing a conditional purchase offer with the CPO management system. Walker, on page 9, lines 62 to 66, discloses the user (buyer) contacting the seller through the central controller. On page 10, lines 5 through 15, Walker shows that the CPO may be guaranteed (security provided against the order) by the buyer putting his account information into the central controller.

Walker provides for the seller to deliver the merchandise to the given dealer / authenticator on page 11, lines 38 to 40, and page 12, lines 32 to 34. Walker provides further refinement beyond the present application in suggesting that the dealer/authenticator itself serves as a third-party inspector, however, on page 6, lines 36-38, Walker discloses an

embodiment allowing the buyer to evaluate the inventory, which is the same as inspecting the merchandise. Increased public traffic would necessarily also result from the method of Walker, as buyers present themselves to the location of the dealer/authenticator to take delivery or inspect the inventory.

Claims 28 through 31 are dependent upon and incorporate all of the elements of Claim 27. **Referring to Claim 28**, Walker, on page 5, lines 62 through 65, page 8, lines 39 to 42, and on page 10, lines 10 through 15, also discloses the secured exchange method of claim 27 wherein security against the transaction can take various forms of advance authorization to an account under the control of the association resource (central controller).

Referring to Claim 29, Walker discloses the secured exchange method of claim 27 wherein security against the transaction includes cover for fees of the association resource and point-of-access associate for providing the program including fees in cases of transactions gone awry on page 8, lines 38 to 41, page 10, lines 10 to 15, and page 13, lines 2 through 4.

Regarding Claim 30, Walker, on page 5, lines 58 through 65, discloses the secured exchange method of claim 27 wherein the given user's security against the transaction is a condition precedent before the given seller moves to cause delivery.

Regarding Claim 31, Walker, page 6, lines 41 through 46, discloses the secured exchange method of claim 27 wherein the association resource (CPO management system) supplies program information to the point-of-access associates including information for the

given point-of-access associate on particular conditions of release the inspected merchandise to the inspecting user.

Referring to Claim 32, Walker discloses the secured exchange method of claim 30 wherein the particular conditions of release include verification that the inspecting user sufficiently fulfills or secures payment or barter for the inspected merchandise at page 10, lines 5 through 10, 13 through 15, and 30 to 40, and page 12, lines 16 through 28.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 33 through 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker in view of Rosen (US Patent No. 5,557,518).

Referring to Claim 33, Walker discloses a method of secured exchange of goods between generally remote parties comprising the steps of:

providing one party and a counter party who desire to exchange goods between each other with opportunities to inspect each other's goods before agreeing to accept or refuse at page 3, lines 40 through 48 and on page 11, lines 38 to 40, and page 12, lines 32 to 34.

providing an out-sourced network of distributed point-of-access associates that supply a network of distributed, physical stores in which to offer such inspections of goods at page 3, lines 40 through 48.

providing an association resource that supplies a secured-exchange program comprising the steps of:

the one party causing delivery of the one party's goods to the counter point-of-access associate's store in conformance with the program as by providing security against the transaction with the association resource at page 11, lines 38 to 40, and page 12, lines 32 to 34;

the counter party causing delivery of the counter party's goods to the given point-of-access associate's store in conformance with the program as by providing security against the transaction with the association resource at page 11, lines 38 to 40, and page 12, lines 32 to 34.

Walker does not disclose providing an association resource that supplies a secured-exchange program comprising the steps of:

the one party specifying a given point-of-access associate's store and the counter party specifying a counter point-of-access associate's store;

the association resource providing both point-of-access associates with authorization for inspection in response to both parties providing security against the transaction so that the parties are afforded mutual opportunity to inspect the each other's goods before agreeing to accept or refuse; and

the association resource further providing the point-of-access associates with authorization for releasing the inspected goods to the inspecting party in response to both parties agreeing to accept;

whereby said secured-exchange program affords the point-of-access associates with opportunities to increase public traffic by offering the inspections.

Rosen discloses providing an association resource that supplies a secured-exchange program comprising the steps of:

the one party specifying a given point-of-access associate's store and the counter party specifying a counter point-of-access associate's store at page 4, lines 8 to 11. Walker and Rosen are analogous art because they are from the same field of endeavor, namely electronic commerce. At the time of the invention it would have been obvious to a person of ordinary skill in the art to modify Walker to include a second point-of-access associate, dealer/authenticator, or trusted agent (Rosen) so that each party in a barter transaction would have their own chosen representative in the transaction.

Rosen discloses the association resource (Trusted Server 200) providing both point-of-access associates (Trusted Agents) with authorization, both for inspection in response to both parties providing security against the transaction so that the parties are afforded mutual opportunity to inspect the each other's goods before agreeing to accept or refuse, and for releasing the inspected goods to the inspecting party in response to both parties agreeing to accept, at Fig. 6A and page 10, lines 43 to 65. Walker's previously discussed CPO management system central controller provides authorization to the dealer/authenticator. In

Rosen, the Trusted Server provides authorization to the Trusted Agents that then determine compliance of the parties. At the time of the invention it would have been obvious to a person of ordinary skill in the art to modify Walker to include a second point-of-access associate, dealer/authenticator, or trusted agent (Rosen) so that each party in a barter transaction would have their own chosen representative in the transaction. Any such system would inherently require a centralized processor or other centralized authorization means, therefore at the time of the invention it would have been obvious to a person of ordinary skill in the art to use the trusted server of Rosen or the central controller of Walker to authorize the allowance of inspections by the two point-of-access associates (or trusted agents, or dealer/authenticators).

Regarding Claim 34, the secured exchange method of claim 33 is disclosed by Walker in view of Rosen as discussed above. Construing failure to act timely and inspect as constructive refusal is taught by Rosen at page 14 line 60 through page 15 line 6, wherein Rosen discloses an abort procedure in event of delay in expected communication between trusted agents. Failure to act timely is a common business and legal condition known throughout many arts. It is also an abstraction in terms of its ability to impart practical application in the technological arts to the current application. In any case, at the time of the invention it would have been obvious to a person of ordinary skill in the art to include a provision for cancellation upon failure to act in a timely manner.

Regarding Claim 35, the secured exchange method of claim 34 further comprising either the association resource or any of the point-of-access associates originating contact

with the respective parties upon the readiness of the corresponding goods for inspection is disclosed by Walker in view of Rosen, as discussed above, with the particular elements of this claim disclosed by Walker at page 6, lines 41 through 54.

Regarding Claim 36, the secured exchange method of claim 35 wherein either the association resource, any of the point-of-access associates, or an opposite party monitors the lapse of time and follow-up contacts since the original contact with a tardy party in order to decide whether such a tardy party constructively refuses by reason of failure to act timely to inspect is disclosed by Walker in view of Rosen, as discussed above, with the particular elements of this claim disclosed by Walker at page 7, lines 24 through 51, and page 14, lines 41 to 44.

Regarding Claim 37, the secured exchange method of claim 33 wherein security against the transaction can take the form of a direct payment to account, an advance authorization to a credit card charge or by otherwise securing payment in some chargeable fashion under the control of the association resource is disclosed by Walker in view of Rosen, as discussed above, with the particular elements of this claim disclosed by Walker at page 5, lines 62 through 65, page 8, lines 39 to 42, and on page 10, lines 10 through 15.

Regarding Claim 38, the secured exchange method of claim 33 wherein security against the transaction be inputted with either of the given or the counter point-of-access associates, any different others of the point-of-access associates, or the association resource is disclosed by Walker in view of Rosen, as discussed above, with the particular elements of this claim disclosed by Walker at page 8, lines 38 to 41, and page 10, lines 21 through 25,

which discusses the inputting of security, in view of Rosen at page 2, lines 12 to 27, which discloses the use of two trusted agents to facilitate the transaction.

Regarding Claim 39, the secured exchange method of claim 33 wherein security against the transaction includes cover for fees of the association resource and point-of-access associates for providing the program including fees in cases of transactions gone awry is disclosed by Walker in view of Rosen, as discussed above, with the particular elements of this claim disclosed by Walker at page 8, lines 38 to 41, page 10, lines 10 to 15, and page 13, lines 2 through 4.

Regarding Claim 40, the secured exchange method of claim 33 wherein the association resource supplies various other matters of information to the point-of-access associates including information in cases of any refusal is disclosed by Walker in view of Rosen, as discussed above, with the particular elements of this claim disclosed by Walker at page 6, lines 41 through 46.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Khosla, Pub. No. US2001/0032152 A1


Tiley, Pub. No. US2001/0054275 A1

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adam L. Levine whose telephone number is 703.305.0836.

The examiner can normally be reached on M-F, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn W. Coggins can be reached on 703.308.1344. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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